

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5577 of 1996

to

SPECIAL CIVIL APPLICATION No 5582 of 1996

with

SPECIAL CIVIL APPLICATION NO. 5589 OF 1996

to

SPECIAL CIVIL APPLICATION NO. 5595 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHIEF OFFICER

Versus

HUSENBHAI O CHAUHAN

And

CHIEF OFFICER

versus

Ranjitsinh Dhirubhai and others

Appearance:

SCA Nos. 5577 to 5582 of 1996

MR YN RAVANI for Petitioner

MR SK BUKHARI for Respondent No. 1

SCA Nos. 5589 to 5595 of 1996
Mr. YN Ravani for the petitioner
Mr. PH Pathak for the respondents.

CORAM : MR.JUSTICE J.N.BHATT
Date of decision: 18/12/96

ORAL COMMON JUDGEMENT

Rule. Service of Rule is waived by learned advocates Mr. Bukhari and Mr. Pathak for the respondents.

2. In this batch of 12 petitions, the challenge is against the common award recorded by the Labour Court, Bhavnagar on 29.2.96 upon a Reference of industrial dispute under section 10 of the Industrial Disputes Act, 1947 (I.D.Act), by invoking the aids of the provisions of Article 227 of the Constitution of India. Since common questions are involved, they are being disposed of by this common judgment.

3. By allowing the Reference t[[Bhe Labour Court granted reinstatement to the original post with continuity of service with back wages to the respondents who are the workmen of the petitioner Savarkundla Municipality. The workmen inter alia contended that they were in the service of the petitioner Municipality since long and their services came to be orally terminated by the Chief Officer on 16.11.1988. The termination orders came to be passed by the Chief Officer of the petitioner Municipality at the time when the appeal against the decision of the Labour Court in industrial reference was pending.

4. The workmen inter alia contended that they orally came to be terminated because they had demanded regularisation and other incidental benefits from the municipality. Each of the workmen had completed more than 240 days of service at the time when oral termination was effected. Some of the workmen have put in more than five years' service. Some of the workmen have put in more than 10 years' service. Since the workmen have put in long service in the petitioner municipality, they had raised several demands and also regularisation which was accepted and therefore, industrial dispute was referred to the Labour Court upon a Reference by the Government. The workmen also contended that the impugned termination orders of the petitioner municipality are without any notice and in

violation of the provisions of sections 25F, 25G, 25H and 33 (1) of the I.D.Act and also the provisions of The Gujarat Municipalities Act, 1963.

5. The petitioner municipality inter alia contended that the workmen were not entitled to any notice or compensation as they are daily rated labourers. The allegation of unfair trade practice and violation of aforesaid provisions was also denied.

6. The Labour Court, upon appreciation of facts and circumstances and the evidence, allowed the Reference and granted reinstatement with full back wages and continuity of service with costs of the Reference by holding that there was violation of the provisions of sections 25F, 25G, 25H and 33(1) of the I.D.Act. Hence, this petition at the instance of the employer petitioner municipality.

7. After considering the facts and circumstances emerging from the record of the present case and the impugned award and the rival submissions raised before this Court in this batch of petitions, this Court has no hesitation in finding that there is a clear violation of the provisions of sections 25F, 25G, 25H of the I.D.Act. It is rightly concluded by the Labour Court on appreciation of facts that the oral termination of the services of the petitioners who have completed more than 240 days and employment to the juniors of the petitioners and not maintaining seniority list. Such findings are justified and require no interference exercising extraordinary, special and equitable writ jurisdiction.

8. It is also not in dispute that the appeal was pending against the award upon a Reference in respect of the industrial dispute. Oral termination of the petitioners during the pendency of the industrial dispute before the competent authority is obviously violative of the provisions of section 33(1) of the I.D.Act. There is no dispute about the fact that earlier Reference was pending when the impugned termination order came to be passed. Therefore there was clear violation of the provisions of section 33(1) of the I.D.Act. The permission for termination of services under section 33 was necessary in view of the pending industrial dispute between the parties.

9. The Labour Court has examined the provisions of sections 25F, 25G and 25H and has rightly found that there was violation of the provisions thereof. The conclusions recorded by the Labour Court have

remained unshaken since this Court is satisfied that the impugned award is justified in so far as violations of the provisions of sections 25F, G, H and 33(1) of the I.D.Act are concerned.

10. The learned advocate appearing for the petitioner Municipality has contended that the workmen were engaged by the municipality for the purpose of scarcity work and they were temporary daily rated labourers and therefore, they were not entitled to the protection of section 25F, G, and H of the I.D.Act. It is also contended that under the provisions of The Gujarat Municipalities Act, the workmen could not have been engaged regularly without sanction of the Government. Both these contentions are reiterated for being rejected being meritless. Both of them are considered by the Labour Court and rightly not accepted. On appreciation of the evidence, the Labour Court has found on facts that the workmen were not engaged for scarcity purpose. It is also not in dispute that some of the workmen are continuously working for more than five years and some of them are working even more than 10 years. Of course, it is an admitted fact that all the workmen have completed continuous service of more than 240 days, but the contention of the petitioner municipality is that they are not entitled to the protection of the provisions of section 25F of the I.D.Act and the Labour Court after considering all the facts and circumstances, rightly rejected the pleas advanced on behalf of the municipality. The findings recorded by the Labour Court in so far as the question of breach of the provisions of sections 25 F, G, H and 33(1) of the I.D.Act is concerned, have remained unassailable. Therefore, the order of reinstatement in the impugned award in favour of the workmen requires to be confirmed.

11. However, in so far as the question of back wages is concerned, the learned advocate Mr. Ravani for the petitioner municipality has contended that in the facts and circumstances, the workmen cannot be awarded more than 30% of back wages. The Labour Court has granted full back wages to all the workmen while passing the impugned order of reinstatement in the award. However, learned advocates Mr. Bukhari and Mr. Pathak both have fairly and frankly conceded that it would be just and reasonable if the workmen are awarded 70% of the back wages.

12. Having regard to the facts and circumstances of the case and aforesaid fair concession, it would be just and reasonable to award 70% of back

wages instead of full back wages as ordered by the Labour Court in the impugned award. Except modification in this behalf in the impugned award, rest part is required to be affirmed and confirmed.

13. In the result, all the petitions are partly allowed. The impugned award is confirmed except the order of back wages which is now reduced to 70% instead of 100%. In the circumstances, the parties are directed to bear their own costs. The workmen are out of job on account of illegal oral termination since 1988. The petitioner municipality is directed to comply with the order of reinstatement with 70% of the back wages on or before 31.12.1996. The petitioner municipality shall comply with the directions contained in the impugned award with said modification as ordered by this Court. Rule made absolute to the aforesaid extent.